



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER
CHIEF

May 31, 2005

MEMORANDUM

To: Representative Fitzgerald

From: Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2005 AB-411** (LRB 05-1412/3)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

May 25, 2005

TO: Joe Kreye

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on AB 411: Selling cigarettes to consumers in this state via direct marketing and providing penalties

It is unclear if the intent of the bill author is to have direct marketers treated the same way as other sellers. A direct marketer should be required to obtain a permit rather than just submit information to the department. The department can approve or disapprove permit applications, require monthly tax returns, and reports, just as under other permits issued under Ch. 139. If the department does not issue a permit, all direct marketers who submit their information to the department will have to be accepted without qualifications, thus accepting some direct marketers even if they have been convicted of crimes related to tax fraud or cigarette smuggling.

In some sections the bill is unclear and does not fully accomplish the desired result. The following changes are suggested:

1. The bill should create language in Chapter 77 requiring the sales tax to be paid by the direct marketer.

2 The author may wish to specify that direct marketers are exempt from holding a retail license. Otherwise direct marketers would be required to hold a retail license with every municipality they sell into and have the sale conducted face to face.

3 To ensure consistency in the statutes, the bill author may consider referring to the definition of identification card in 134.66(1) (c) instead of defining it again.

4. Currently under Wisconsin's MSA sections 895.10 and 895.12, cigarette brands must be certified by the Attorney General's office and approved by the department for sale, prior to any sale of a brand in Wisconsin. In order to be consistent with the cigarette MSA statutes 895.10 and 895.12, the bill author may consider amending s. 139.30 (7) to read: "Manufacturer" means any person who directly manufactures cigarettes for the purpose of sale, including the authorized agent of a person who directly manufactures cigarettes for the purpose of sale.

The bill author may also consider adding a section stating: "No person may sell cigarettes to consumers in this state by direct marketing unless the cigarette brands are approved by the department and listed in the directory of certified tobacco product manufacturers and brand as provided under s. 895.12(2)(b)."

5. The term "person" should be defined since it is used throughout this section. The department suggests defining a "Person" to mean any individual, sole proprietorship, partnership, Limited Liability Company, corporation, or association, or any owner of a single-owner entity that is

disregarded as a separate entity under Ch.71.

6. Since a bonded direct marketer can purchase and have unstamped cigarettes in their possession, the writer may consider amending s.139.31(1) (a) 1, to read "Manufacturers, bonded direct marketers, distributors or warehouse operators possessing valid permits issued by the secretary."

7. Since a distributor and bonded direct marketer can both purchase unstamped cigarettes and affix tax stamps, the writer may consider amending s.139.34(6) and s.139.34(8) by adding at the end of these statutes "Or bonded direct marketer."

8. No provisions were made in the bill for the direct marketing of tobacco products. The bill author may wish to include direct marketing of tobacco products in this bill since they are tied with cigarettes.

The department recommends drafting this bill based on the proposal for direct marketing of cigarettes in AB 100. The department is willing to work with the author to make the necessary technical changes which were included in AB 100 that are needed to administer and enforce direct marketing, such as officer liability and issuing updated permits.

If you have any questions regarding this technical memorandum, please contact Jacek Cianciara at 266-8133.

cc: Representative Fitzgerald

Fiscal Estimate - 2005 Session

☒ Original
 ☐ Updated
 ☐ Corrected
 ☐ Supplemental

LRB Number 05-1412/3	Introduction Number AB-411
Subject Selling cigarettes via the Internet	
Fiscal Effect State: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations </div> <div style="width: 33%;"> <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues </div> <div style="width: 33%;"> <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <div style="text-align: center;"> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No </div> <input type="checkbox"/> Decrease Costs </div> </div> Local: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> 2. <input type="checkbox"/> Decrease Costs <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> </div> <div style="width: 33%;"> 3. <input type="checkbox"/> Increase Revenue <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> 4. <input type="checkbox"/> Decrease Revenue <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> </div> <div style="width: 33%;"> 5. Types of Local Government Units Affected <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> Towns <input type="checkbox"/> Counties <input type="checkbox"/> School Districts </div> <div style="width: 33%;"> <input type="checkbox"/> Village <input type="checkbox"/> Others <input type="checkbox"/> WTCS Districts </div> <div style="width: 33%;"> <input type="checkbox"/> Cities </div> </div> </div> </div>	
<div style="display: flex; justify-content: space-between;"> <div> Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS </div> <div> Affected Ch. 20 Appropriations </div> </div>	
Agency/Prepared By DOR/ Jacek Cianciara (608) 266-8133	Authorized Signature Rebecca Boldt (608) 266-6785
Date 5/27/2005	

Fiscal Estimate Narratives
DOR 5/31/2005

LRB Number	05-1412/3	Introduction Number	AB-411	Estimate Type	Original
Subject					
Selling cigarettes via the Internet					

Assumptions Used in Arriving at Fiscal Estimate

Under current law a person may not sell cigarettes in this state without having a permit from the Department of Revenue (DOR). This bill prohibits a direct marketer from selling cigarettes to consumers in this state unless the direct marketer fulfills certain requirements. The bill defines "direct marketing" as publishing, making an offer, or selling cigarettes, when the consumer is not physically present on a premise that sells cigarettes.

Under the bill, a direct marketer must certify to DOR that the person will register with debit and credit card companies; that the invoices for all shipments of cigarettes will bear the direct marketer's name and address; and that the direct marketer will provide DOR any information that DOR considers necessary. The direct marketer may not sell any cigarettes to consumers in this state unless the sales tax, use tax, or cigarette tax, as appropriate, has been paid on the sale of the cigarettes.

This bill also requires a direct marketer who sells cigarettes to consumers to verify the consumer's name, address, and the age of at least 18 years. The bill specifies the means of verification. The bill also requires that any person who delivers cigarettes verify that the consumer who purchased the cigarettes and who receives the delivery is at least 18 years of age.

According to the Department of Agriculture, Trade, and Consumer Protection, minimum markup requirements would apply to the sale of cigarettes by direct marketers.

A fiscal estimate of the bill is not feasible. However, the Department does not expect a significant amount of additional tax revenues to be collected from direct marketers due to a recent decision by major credit card companies to deny service to online tobacconists combined with the minimum markup requirements of the bill. It will be very difficult for direct marketers to sell cigarettes over the internet without having a major credit card to secure the payment and the minimum markup requirement will most likely eliminate a competitive advantage of cigarette internet sales.

The Department would incur administrative costs which can be absorbed within the Department's budget.

Long-Range Fiscal Implications